

REMARKS

Claims 1-8, 10-17, 19-22 and 24-28 are pending. Claims 9, 18, and 23 were previously canceled. Claims 1-8, 21, 22 and 24-28 have been withdrawn from consideration. Claims 10, 17, 24, 25, and 28 are currently amended. New claims 29 and 30 have been added.

Reconsideration of the application, as amended, is requested.

Support for the amendment to claim 10 can be found in the specification, for example, page 12, line 20 to page 14, line 3, and in FIG. 3.

Support for the amendment to claim 17 can be found in the specification, for example, page 20, lines 10-28, and in FIGS. 17 and 18.

Claim 24 is amended to be dependent from claim 10. Amendments to claims 24, 25, and 28 are made for internal consistency and should be self-supporting.

§ 102 Rejections

Claims 10-14 and 16-17 stand rejected under 35 USC § 102(b) as purportedly anticipated by Tritsch (US 3,930,503).

Although Applicants do not necessarily agree with the rejection or the interpretation of claim 10, claim 10 has been amended in a clarifying way to facilitate prosecution.

Tritsch does not anticipate claims 10-14 and 16-17 because it does not teach each and every element as set forth in the claims, as amended. For example, Tritsch does not teach or suggest at least a closure tape tab "wherein said distal end portion and the first major surface of said inner tab portion are attached where they overlap, and wherein an anti-adhesive means is provided to directly contact at least a part of said exposed portion of the first major surface of the inner tab portion", which is recited in amended claim 10 and included in claims 11-14 and 16 because of their dependency on claim 10. Moreover, it is unclear how or why a person having ordinary skill in the art would modify Tritsch to obtain a closure tape tab as claimed in amended claim 10.

Regarding claim 17, as the Office Action states in paragraph 30 that Tritsch fails to teach a line of weakness, it is assumed that claim 17 was inadvertently listed in the claims rejected under 35 USC § 102(b).

For at least the reasons given above, the rejection of claims 10-14 and 16-17 under 35 USC § 102(b) as being anticipated by Tritsch (US 3,930,503) has been overcome and should be withdrawn.

Claim 29 further defines the attachment means for the proximal and distal end portions to the inner tab portion. Since claim 29 depends from claim 10, claim 29 is also patentable at least for the reasons given above.

Claims 10-16 and 19-20 stand rejected under 35 USC § 102(a) as purportedly anticipated by Loescher (WO 2004/075803).

Although Applicants do not necessarily agree with the rejection or the interpretation of claim 10, claim 10 has been amended in a clarifying way to facilitate prosecution.

Loescher does not anticipate claims 10-16 and 19-20 because it does not teach each and every element as set forth in the claims, as amended. For example, Loescher does not teach or suggest at least a closure tape tab "wherein said proximal end portion is attached to the second major surface of said inner tab portion" and "wherein said distal end portion and the first major surface of said inner tab portion are attached where they overlap", which is recited in amended claim 10 and included in claims 11-16, 19, and 20 because of their dependency, direct or indirect, on claim 10. As clearly shown in Fig. 2 of Loescher, nothing is present on the lower surface of elastic film 18. Moreover, it is unclear how or why a person having ordinary skill in the art would modify Loescher to obtain a closure tape tab as claimed in amended claim 10.

For at least the reasons given above, the rejection of claims 10-16 and 19-20 under 35 USC § 102(a) as being anticipated by Loescher (WO 2004/075803) has been overcome and should be withdrawn.

§ 103 Rejections

Claims 15 and 17 stand rejected under 35 USC § 103(a) as purportedly unpatentable over Tritsch (US 3,930,503) in view of Richman et al. (US 4,020,842).

Applicants request withdrawal of the rejection because a proper *prima facie* case of obviousness has not been made, at least with respect to the presently amended claims.

In order to establish a *prima facie* case of obviousness of a claim, all the claim limitations must be taught or suggested by the prior art; (see, e.g., *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970), cited at MPEP § 2143.03). Claim 15 depends from claim 10. Tritsch does not teach or suggest each of the elements of claim 10 as described above. Richman et al. does not remedy this deficiency. Therefore, claim 15 is patentable for at least the reasons given above.

Furthermore, the statement in the Office Action, "Regarding claim 15, Tritsch teaches wherein said proximal end portion is comprised of a nonwoven material (col. 3, lines 65-66)," is in error. Col. 3, lines 65-66 of the reference describe the diaper facing sheet 23, not the proximal end portion of the tab. Furthermore, the Office Action states in the rejection of claim 10 that the proximal end portion is pressure sensitive adhesive layer 15 at one terminal end. It is unclear how the proximal end can be both the pressure sensitive adhesive layer 15 and a nonwoven material at the same time. Therefore, the rejection lacks the rational underpinnings required to establish a legal conclusion of obviousness.

Regarding claim 17, the combination of Tritsch and Richman et al. does not teach every element of the claim, as amended. For example, the combination does not teach at least wherein "said distal end portion overlays and is face-to-face relation to the first major surface of said inner tab portion, wherein said distal end portion extends over said entire first major surface of said inner tab portion".

Furthermore, the following statements in the Office Action lack the rational underpinnings required to support a legal conclusion of obviousness:

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a line of weakness between the distal end and the proximal end portions of the closure tape tab of Tritsch to control the limitation of peel-back (Richman et al., col. 4, lines 10-19).

The resulting structure of Tritsch as modified by Richman et al. produces a closure tape tab wherein that a portion of the distal end portion is removable from the closure tape tab so as to expose the first major surface of said inner tab portion (Tritsch, release surface 25, Fig. 3).

Since the Office Action has interpreted the distal end portion and the inner tab portion to be part of the same integral tab 13 of Tritsch, providing a line of weakness is the distal end

portion would appear to result in the integral tab 13 of Tritsch falling apart. Accordingly, providing such a line of weakness would destroy the function of the tab of Tritsch. A person having ordinary skill in the art would therefore have no motivation to make such a modification.

For at least the reasons given above, the rejection of claims 15 and 17 under 35 USC § 103(a) as being unpatentable over Tritsch (US 3,930,503) in view of Richman et al. (US 4,020,842) has been overcome and should be withdrawn.

New claim 30 depends from claim 17 and is also patentable at least for these reasons.

Claims 19-20 stand rejected under 35 USC § 103(a) as purportedly unpatentable over Tritsch (US 3,930,503) in view of Richman et al. (US 4,020,842) and further in view of Loescher (WO 2004/075803).

Applicants request withdrawal of the rejection because a proper *prima facie* case of obviousness has not been made, at least with respect to the presently amended claims.

In order to establish a *prima facie* case of obviousness of a claim, all the claim limitations must be taught or suggested by the prior art; (see, e.g., *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970), cited at MPEP § 2143.03). Claim 19 depends from claim 10, and claim 20 depends from claim 19. Neither Tritsch nor Loescher teaches or suggests each of the elements of claim 10 as described above. Richman et al. does not remedy this deficiency. Therefore, claims 19 and 20 are patentable for at least the reasons given above.

At least for the reasons given above, the rejection of claims 19-20 under 35 USC § 103(a) as being unpatentable over Tritsch (US 3,930,503) in view of Richman et al. (US 4,020,842) and further in view of Loescher (WO 2004/075803) has been overcome and should be withdrawn.

Request for Rejoinder

Restriction was required between Group II to a closure tape tab and Group IV, a method of making the closure tape tab. Withdrawn claims 24 to 28 have been amended to incorporate all the claim features of patentable claim 10. Accordingly, it is submitted that they are likewise patentable. Rejoinder of at least claims 24 to 28 is respectfully requested. See MPEP § 821.04.

In view of the above, it is submitted that the application is in condition for allowance.
Examination and reconsideration of the application as amended is requested.

Respectfully submitted,

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